

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN LARRY JENT**, on February 3, 2005 at 8:00 A.M., in Room 455 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Larry Jent, Chairman (D)  
Rep. Dee L. Brown, Vice Chairman (R)  
Rep. Veronica Small-Eastman, Vice Chairman (D)  
Rep. Joan Andersen (R)  
Rep. Mary Caferro (D)  
Rep. Sue Dickenson (D)  
Rep. Emelie Eaton (D)  
Rep. Robin Hamilton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. Hal Jacobson (D)  
Rep. William J. Jones (R)  
Rep. Gary MacLaren (R)  
Rep. Bruce Malcolm (R)  
Rep. Alan Olson (R)  
Rep. Bernie Olson (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Branch  
Marion Mood, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 346, 1/25/2005;  
HB 426, 1/25/2005  
Executive Action: None

**HEARING ON HB 346****Opening Statement by Sponsor:**

**REP. GEORGE GOLIE (D), HD 20**, opened the hearing on **HB 346**, Revise employment restriction for retired volunteer firefighters. He advised that HB 346 serves as a retention tool through a change in firefighters' retirement benefits. The substance of the bill is contained on Page 3, Lines 8 through 12, which he read to the Committee.

**Proponents' Testimony:**

**John Semple, Montana Fire Alliance**, provided copies of SB 197, explaining that his organization would like to replace language in HB 346, Page 3, Lines 8 and 9, and replace them with language from SB 197 so that both bills allow retired firefighters to come back and serve as volunteer firefighters. The goal is to have experienced firefighters come out of retirement to help train new hires.

**EXHIBIT** (sth27a01)

**Melanie Symons, Legal Counsel, Montana Public Employees Retirement Board**, advised that currently, retired volunteer firefighters who receive a retirement benefit are not permitted to return to work. This bill allows them to continue their volunteer services without any impact to their retirement benefits. She stated the Board's support for this bill and for the proposed amendment which would make language consistent with that in SB 197; she added the Board preferred language in SB 197.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**VICE CHAIR BROWN, HD 3, HUNGRY HORSE**, referred to the fiscal note which addresses the workers' compensation issue and asked the Sponsor how he would handle this. **REP. GOLIE** advised the constituent who had requested this bill had told him these volunteers did not receive health insurance; as far as workers' compensation was concerned, he had stated he would not insist on having that coverage. **REP. GOLIE** felt this issue needed to be addressed but was not clear on what to suggest.

**VICE CHAIR BROWN** asked to follow up with Ms. Symons, inquiring whether it was mandatory for volunteer firefighters to have workers' compensation. **Ms. Symons** deferred to Michael O'Connor, Montana Public Employees' Retirement Administration (MPERA), who was in the audience. **Mr. O'Connor** advised that the Volunteer

Firemen's Act does not require them to be covered under workers' compensation but makes it an option; he added that some departments carry workers' compensation, and others offer supplemental health insurance. As to the fiscal note, he stressed that those departments using workers' compensation were advised to make sure there would not be any issue with the coverage in case the volunteers get injured.

**REP. BERNIE OLSON, HD 10, LAKESIDE**, stated there was no fiscal impact for HB 346 but SB 197 did have a fiscal note attached and asked for an explanation. **Mr. O'Connor** explained SB 197 allows for retired firefighters to return to work, and it attempts to increase benefits. He added that his agency was concerned because there was no parallel increase in contributions. **REP. B. OLSON** asked how much of an increase was planned. **Mr. O'Connor** advised SB 197 provided for service credit for every year after twenty years of service whereas current law stipulates this applies only to people 55 years of age and older. For retirees over 55 who have a minimum of twenty years of service, the increase in benefits would total \$35,000 annually; for people under 55 who have more than twenty years of service would get the same, bringing the additional annual cost to \$70,000.

**REP. B. OLSON** inquired whether the Sponsor would consider this a friendly amendment. **REP. GOLIE** asked which amendment he was considering. **REP. B. OLSON** replied he was considering melding the two bills together. **REP. GOLIE** advised that SB 197 had already passed second reading in the Senate; since it was coming before this Committee, the members would have to decide how to proceed. He added that SB 197 accomplished what he wanted to accomplish with HB 346. **REP. B. OLSON** thanked him for the explanation.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 12.7}*

**REP. SUE DICKENSON, HD 25, GREAT FALLS**, asked Mr. O'Connor why language in SB 197 was preferred by the Board over that in HB 346, since he had issues with the cost associated with SB 197. **Mr. O'Connor** replied what they prefer is language in SB 197 dealing with retirees being able to return to work.

**REP. GARY MACLAREN, HD 89, VICTOR**, wondered which section he was referring to. **Mr. O'Connor** advised the preferred language was on Page 2, Lines 5 through 7, in SB 197 as opposed to language in HB 346 which is on Page 3, Lines 8 through 12.

**Closing by Sponsor:**

**REP. GOLIE** closed, stating the idea behind HB 346 was to keep volunteer firefighters working in rural Montana. He did not feel

workers' compensation was an issue as there would be coverage for the volunteers, whether through workers' compensation or through supplemental insurance. In closing, he repeated that SB 197 accomplished his goals as did HB 346; therefore, it did not matter to him which of the two bills the Committee chose as long as one of them passed.

**{Tape: 1; Side: A; Approx. Time Counter: 12.7 - 17.8}**

#### HEARING ON HB 426

#### Opening Statement by Sponsor:

**REP. WANDA GRINDE (D), HD 48**, opened the hearing on **HB 426**, Revise definition of compensation for police retirement to include overtime, holiday and shift differential pay. HB 426 would allow final average salary calculations to be based on total earnings, including the above compensation. Due to the change in definition, police officers will be making an increased contribution to their retirement plan and receive higher benefits upon retirement. She added that other law enforcement personnel already enjoy such a provision.

#### Proponents' Testimony:

**Bill Dove, Montana Police Protective Association**, submitted written testimony.

**EXHIBIT**(sth27a02)

**Jerry Williams, Montana Police Protective Association, and active member of the Butte-Silver Bow Police Department**, referred to Item 7 in the fiscal note, stating there was no concrete data supporting the amounts mentioned; even the assumption of a five percent salary increase was incorrect.

**{Tape: 1; Side: B}**

He also disagreed with the statement in Item 9 of the fiscal note, saying that available overtime is distributed equally among the members of his Department. He added, since the Police Department is on a 24/7/365 schedule, they do work on holidays and are compensated at time and a half. He submitted that holiday pay translates into an additional four hours of pay whereas he would collect eight hours' pay if he stayed home. Referring to Item 10, he stated the 10% increase was unrealistic and should be cut in half, making the impact on the general fund approximately \$399,000. He advised the information on Page 3 was confusing, but acknowledged that the Retirement Board did have data supporting the various contribution rates paid by their members. Most of them have a 9% contribution rate as this is required in order to qualify for the Guaranteed Annual Benefit

Adjustment (GABA) increases. **Mr. Williams** also disputed the "long-range impacts" as being significant due to the lack of concrete supporting data. In closing, he concurred with previous testimony with regard to overtime, adding that his Department was cutting back as a cost savings measure.

**Jim Kembel, Montana Association of Chiefs of Police**, referred to previous testimony and urged passage of the bill.

**Tom Schneider, Montana Public Employees Association**, stood in support of HB 426, adding that overtime, holiday and shift differential pay is taxed the same way as regular wages and should be treated as such; by the same token, municipal police officers should be treated the same as other law enforcement personnel.

#### **Opponents' Testimony:**

**Melanie Symons, Legal Counsel, Public Employees Retirement Board**, stated that her agency administers the police officers' retirement system; while five of the eight retirement systems administered by the Board are "public safety systems," they have different employers. Municipal police officers are employed by cities. First and second class cities are required to participate in the municipal police officers' retirement system, other cities can choose to do so, contracting with the Board and becoming members of that system. Officers employed by these cities are required to be members of the Public Employees' Retirement System (PERS). She explained that the retirement system is funded by three different contribution sources: police officers, participating cities and the State. The State provides 29.37% of a member's compensation as its contribution out of the general fund while cities provide 14.41% of compensation. **Ms. Symons** advised when compensation increased as proposed in this bill, the State and city contributions increase as well. As to the fiscal note, she defended the 9% as this is the rate for any officer who elected GABA. It is also the percentage paid by members who are hired after July 1, 1997 when GABA became mandatory.

**Ms. Symons** stated that any increase has an impact far into the future as it affects future retirees. She emphasized that retirement benefits represent a contract right, and benefit amounts cannot be decreased once they have been set. The Board's main objection to HB 426 is the fact that it increases compensation which in turn effects an increase in contribution by the cities and the State; in terms of the Municipal Police Officers' or the Firefighters' Unified Retirement systems, the definition of "compensation" has not included overtime, holiday

or shift differential pay since the Board started administering said system. Although the Board opposes HB 426, **Ms. Symons** added, should the Committee pass this legislation, the Board suggested including the Firefighters' Unified Retirement System because otherwise, that group would come to the 2007 Legislature and ask for the same benefit and possibly more. She told the Committee this concept was known as "leap-frogging".

In closing, **Ms. Symons** informed the Committee that when faced with the decision to oppose or support legislation, the criteria applied by the Board are equity, unfunded liability issues and cost. As to the disputed calculations contained in the fiscal note, she defended the 5% increase as actual, stating the numbers were compiled by an actuary experienced in police and public safety retirements systems. Since the actuary had no way of knowing by how much officers' compensation would increase through this bill, he prepared tables based on 5%, 10% and 15% increases; in preparing the fiscal note, the Board opted to go with the median projection of 10%. She cautioned that a 10% increase in compensation represents a \$10,074,000 actuarial liability to the retirement system; 5% would result in \$5,037,000 and so on.

**Ms. Symons** advised that contributions pay for only 25% of retirement benefits, the balance is covered by investment earnings estimated at 8%. It stands to reason that the funds necessary to pay for the benefits will not be sufficient if the investment return is less than the anticipated 8%. She opined there were too many unknowns, such as the amount of overtime or shift differential. Moreover, if this overtime came at the end of a career, with the retirement benefits being calculated on the average compensation of the previous 36 months, the officer would not have paid into the system based on this increase. In closing, she urged the Committee to oppose this bill, thereby ensuring that retirement benefits would be available not only for current but future retirees as well.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 20.7}**

**Questions from Committee Members and Responses:**

**VICE CHAIR BROWN** asked Mr. Williams how many police officers in the Butte-Silver Bow area would be affected by HB 426. **Mr. Williams** advised 37 would be eligible. **VICE CHAIR BROWN** then inquired how many paid holidays these officers received. **Mr. Williams** stated they work eleven holidays per year. **VICE CHAIR BROWN** requested a compilation of overtime, holiday and shift differential pay for these 37 officers prior to Executive Action on HB 426. **Mr. Williams** replied that he would provide the information, adding that out of the \$2.7 million salary and wage

budget, \$190,000 is budgeted for overtime, holiday and shift differential.

**REP. HAL JACOBSON, HD 82, HELENA**, ascertained both the municipal police officers and the Firefighters Unified receive their retirement benefits solely from PERS rather than Social Security, which **Ms. Symons** affirmed.

**REP. B. OLSON** stated he understood Ms. Symons to say the cost for this bill would be \$1.4 million for 2006/2007. **Ms. Symons** agreed. **REP. B. OLSON** asked whether the \$5 million to \$10 million quoted represented the 60-year impact on the retirement fund. **Ms. Symons** corrected him, stating this number represented a 30-year impact.

**REP. WILLIAM JONES, HD 9, BIGFORK**, wondered whether this provision would create a division between people who are already retired and those still working. **Ms. Symons** admitted it would increase retirement benefits but retirees and active employees were not working side by side.

**REP. DICKENSON** ascertained that the actuary who had provided the information on the fiscal note was from Oregon. When **Ms. Symons** confirmed this, she wondered whether the projected 5% compensation increase was realistic for Montana. **Ms. Symons** advised this actuary works for many different states and his assumptions are based on many states' levels; she pointed to Mr. Williams' testimony with regard to the eleven paid holidays, saying this alone represented a sizeable increase.

**CHAIRMAN LARRY JENT, HD 64, BOZEMAN** asked Mr. O'Connor to follow up. **Mr. O'Connor** advised the 5.31% increase did not represent an individual's compensation increase but rather reflected the increase in total compensation as reported to the retirement system, adding this had been the actual increase to the system over the last five years.

**CHAIRMAN JENT** wanted to make sure this increase was based on all compensation, including regular, overtime, holiday, and shift differential pay which **Mr. O'Connor** denied, stating it was compensation as defined in current statute, without the additional pay.

(VICE CHAIR BROWN left at 9:00 A.M.)

**REP. JOAN ANDERSON, HD 59, FROMBERG**, wondered if the assumption of an 8% investment return was realistic, and inquired if this had been the percentage over the last ten years. **Mr. O'Connor**

advised an experience study completed this past summer showed that this assumption was indeed reasonable and accurate, even though 5% and 7% losses had been incurred in 2001 and 2002; he added that over time, the 8% assumption was reasonable. He cautioned, however, that if this assumption did not pan out, there would be an increase in the unfunded liability from an estimated 24.4 year amortization to more than thirty which would be unconstitutional.

**{Tape: 2; Side: A}**

**REP. B. OLSON** wondered why the PERS contracted with an actuary from Oregon. **Mr. O'Connor** explained that Montana does not have many certified actuaries.

**REP. MACLAREN** stated he was still unclear about what types of compensation were included in the 5.31% increase. **Mr. O'Connor** reiterated that it represented the increase in the total compensation being reported to the retirement system, not an individual's wage increase. He speculated the increase could be due to promotions or hiring of new employees.

**CHAIRMAN JENT** asked the Sponsor whether she planned to have a different fiscal note prepared since she did not sign the one attached to the bill. **REP. GRINDE** advised she did not; she had not signed the fiscal note as she had received just before the hearing. **CHAIRMAN JENT** wondered whether she had talked to the Governor's Budget Office as the State contributes 29% of total compensation as defined in HB 426 and this amount would have to be included in HB 2. **REP. GRINDE** stated she had not yet contacted the Governor's Budget Office. **CHAIRMAN JENT** surmised that any increase in compensation would result in a 14.41% contribution from the cities; he asked whether she had gotten any reaction from the local governments involved. **REP. GRINDE** asked to defer to **Mr. Williams** who advised there had not been any opposition from Alec Hanson, Montana League of Cities and Towns or any of the administrators, and the Montana Association of Chiefs of Police had testified in favor of the bill.

**CHAIRMAN JENT** addressed Mr. Williams, stating that based on the \$190,000 budgeted for overtime and holiday pay, should this bill pass, Butte-Silver Bow's 14.41% share of retirement contributions would require an additional \$27,000. **Mr. Williams** confirmed this, adding that of all the retirement bills they had requested since 1991, the League of Cities and Towns had only opposed one.

**REP. MACLAREN** asked Mr. O'Connor about the percentage of actuarial funding for HB 426. **Mr. O'Connor** referred to Table 5 of the "Green Sheets" provided to the Committee by the Board at



the beginning of the Session. The column for municipal police officers shows a 14.41% employer contribution, a 29% contribution by the State and 9% by the employees', bringing the total of contributions coming in to fund the system to 52.78%. He explained that if there was no unfunded liability, there was no change in retirement benefits and the assumptions were correct, the system would need 25.77% to fund the benefit as required by law; the balance, or 27%, of the incoming 52.78% is used to pay off the present unfunded liability, which is estimated to take 24.4 years.

**CHAIRMAN JENT** inquired whether this bill would create an unfunded liability. **Mr. O'Connor** advised that it did, but the 27% in additional contributions would pay it off in the same time frame. **CHAIRMAN JENT** surmised that, according to the fiscal note, HB 426 would cost the general fund about \$800,000 in FY 2006 and FY 2007; in addition, it would create a liability of about \$400,000 in each of the two years for local governments, with the balance to be paid by employee contributions. **CHAIRMAN JENT** wondered if there was a way to structure the bill to make it more acceptable from the Board's perspective. **Mr. O'Connor** stated the concept was to increase benefits by increasing compensation; at issue was equity as it left out the firefighters. If the Committee felt this was worth being added into law, firefighters should be included. **CHAIRMAN JENT** asked if the Board's principal objection was the issue of equity. **Mr. O'Connor** contended it was, but the Board was also skeptical about the actuarial soundness of the proposal.

**CHAIRMAN JENT** asked for one more clarification from Mr. O'Connor: pointing to Table 5, Page 2, of the "Green Sheets" under Municipal Police, it shows the actuarial value of the system's assets at \$150 million, and the liabilities at \$260 million, meaning that the percentage of liabilities covered by assets is 57%. **Mr. O'Connor** agreed and added that the additional 27% would pay off the difference of \$110 million which is the unfunded liability. **CHAIRMAN JENT** advised that he was asking these questions in part so that Committee members could familiarize themselves with the information in the "Green Sheets" in order to make informed decisions with regard to retirement bills.

**REP. JACOBSON** surmised that the 57% ratio would not change under this bill, which **Mr. O'Connor** confirmed.

Before closing, **REP. GRINDE** asked the Chairman's permission to allow Ms. Heffelfinger, Legislative Services Division, to address the HB 2 issue, commenting that it did not need to be included as per the fiscal note. **Ms. Heffelfinger** stated the retirement system is funded by a statutory appropriation so there is no need

for its inclusion in HB 2. However, HB 2 represents one part of the State's budget, the rest is made through statutory appropriations which are permanent appropriations.

**Closing by Sponsor:**

**REP. GRINDE** closed.

**CHAIRMAN JENT** announced that the Committee would not take Executive Action on any bills as VICE CHAIR BROWN was not present.

**ADJOURNMENT**

Adjournment: 9:30 A.M.

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REP. LARRY JENT, Chairman

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MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

**EXHIBIT ([sth27aad0.TIF](#))**